IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 357 of 1997
In
SPECIAL CIVIL APPLICATION No. 8676 of 1995
WITH
CIVIL APPLICATION No. 3604 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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NANTHUBHAI KHODABHAI HELAIYA - Appellant
Versus
STATE OF GUJARAT & 2 - Respondents

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Appearance :

MR BM MANGUKIYA for Appellant.
MR APURVA DAVE, AGP for Respondent Nos. 1 – 2.
MR SP HASURKAR for Respondent No. 3.
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 02/05/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The appellant – original petitioner has filed this appeal under Clause 15 of the Letters Patent challenging the order dated 17.03.1997 passed by the Learned Single Judge of this Court in Special Civil Application No. 8676 of 1995 whereby the prayer made by the petitioner for issuance of a writ of mandamus and/or in the nature of mandamus and/or by any other writ, order of direction directing the respondent State Government to place the petitioner at the appropriate place in the seniority list and, more particularly, at the place between serial No. 98 & 99 before Mr. V. S. Shah and also writ of mandamus or in the nature of mandamus or any other appropriate writ, order or direction

declaring that the reversion granted to the petitioner on the basis of the seniority list finally published by the respondent on 09.03.1995 is illegal and arbitrary and hence, to grant the consequential reliefs, has been rejected.

2. This Court has issued notice on 02.04.1997 and in Civil Application, order of status-quo as on that day was directed to be maintained. The said order of status-quo is in operation till this date. Despite the fact that the appeal is filed in 1997 and only notice was issued on 02.04.1997, the appeal has not yet been admitted nor any rule is issued.

3. It is the case of the appellant that the appellant joined the services of the State of Gujarat in Revenue Department as Clerk on 23.12.1968 and he was promoted as Dy. Mamlatdar on 07.05.1979. The appellant passed Lower Revenue Qualifying Examination in December 1982. The appellant also passed the Higher Revenue Qualifying Examination on 07.05.1990. The appellant was promoted as

Mamlatdar and joined as Mamlatdar on and from 24.08.1992. Special Civil Application No. 2224 of 1993 was preferred by some Schedule Caste persons for giving them deemed date of promotion to the post of Mamlatdar. This Court passed an order on 26.10.1994 in Special Civil Application No. 2224 of 1993 directing the Government to finalize the seniority list of Deputy Mamlatdar in the State of Gujarat and give deemed date to persons who were left out from promotion. The Court directed that the said question should be considered in accordance with the Rules. Provisional seniority list of the cadre of Dy. Mamlatdar came to be published on 23.02.1994 wherein the name of the appellant was shown at Sr. No. 1597. The appellant, therefore, filed his objections for being placed at Sr. No. 1597. The State Government published the final seniority list on 09.03.1995 considering the direction issued by this Court by an order dated 26.10.1994. The said list was contrary to Rules 7 & 9 of the Lower Revenue Qualifying Examination Rules. The appellant was reverted from the post of Mamlatdar

to the post of Dy. Mamlatdar on 06.09.1995. The order itself says that the appellant was promoted when some seniors who were not placed above him in the seniority list were not eligible to be promoted and appellant was being reverted. It is this order which was challenged in Special Civil Application No. 8676 of 1995.

4. Mr. B. M. Mangukiya, learned advocate appearing for the appellant has submitted that the reversion order is on the wrong basis inasmuch as no senior of the appellant has been by-passed while giving adhoc promotion. In fact, the junior of the appellant has been retained as Mamlatdar and the appellant was sought to be reverted. The preliminary list of seniority prepared at the relevant time did not know the correct position of the appellant and, therefore, the appellant made representations for placing the appellant at appropriate place in the seniority list. He has further submitted that at the time of publishing the provisional seniority list, the appellant was placed at Sr. No. 1579 considering the appellant

as late latiff. The appellant made representations in respect of the wrongful placing of the appellant in the provisional list of seniority. Therefore, at the time of publishing the final seniority list dated 09.03.1995, the appellant was placed at Sr. No. 378. Since in the final seniority list, the allotment of the seniority of the appellant was made wrongfully and, therefore, the appellant preferred the aforesaid writ petition challenging the reversion order as well as the placement of the appellant in the seniority list. The appellant claimed that as per the roster, the appellant was required to be placed between Sr. Nos. 98 & 99. He has further submitted that while allotting the seniority in the final list, it has been mentioned that the appellant has passed examination of LRQE as a late latiff. The respondent Government while preparing the final seniority list, the placement was awarded to the appellant on the basis that the appellant has failed to clear the LRQE within prescribed time limit and chance. On the basis thereof, the appellant has been placed at Sr. No. 378 instead of Sr. Nos. in between 98 & 99.

5. Mr. Mangukiya has further submitted that various writ petitions have been preferred before this Court. The candidates of Scheduled Caste & Scheduled Tribes were sought to be reverted on the basis of wrongful promotion granted to them. It was contended on behalf of the Government that the candidates of Scheduled Castes and Scheduled Tribes were given adhoc promotion and while granting the adhoc promotions to those candidates, seniority of the candidates of Scheduled Caste and Scheduled Tribes cannot be maintained and, therefore while finalization of the final list of seniority, the persons who are juniors are required to be reverted so as to accommodate seniors.

6. Mr. Mangukiya has further submitted that in Special Civil Application No. 7158 of 1995, the same seniority list of the eligible Dy. Mamlatdar was challenged and the same was rejected by the Learned Single Judge of this Court. It was contended that the present petition should also be rejected as it

challenges the same seniority list and the petition filed by the appellant should also be disposed of on the ground that the petitions preferred by the other persons have been dismissed by the Learned Single Judge opposing the seniority list by holding that the seniority allotted to persons below Sr. Nos. 530 to 1245 were rightly assigned the placement. In fact, the appellant has no occasion to point out that the petition of the appellant was not required to be dealt with in view of the judgment rendered by the Learned Single Judge in other Special Civil Applications. He has further submitted that the Learned Single Judge has committed an error apparent on the face of record in as much as the appellant has been placed in the seniority list at Sr. No. 378. Therefore, assuming for the sake of arguments without admitting the same that the judgment rendered by the Learned Single Judge in other Special Civil Applications dated 24.06.1996 would also apply in the like terms in case of the appellant, the Learned Single Judge has not examined the validity of allotment of the seniority in

case of the candidates upto Sr. No. 530. He has, therefore, submitted that the dismissal of the writ petition preferred by the appellant is ex facie illegal.

7. Mr. Mangukiya has further submitted that the Learned Single Judge has failed to appreciate the fact that the contention raised by the appellant in the petition and others raised by the other persons in other petitions are not based on same facts. The appellant has challenged the placement of his seniority on Sr. No. 378 on the ground that the appellant was considered as a late latiff while passing the LRQE examination. In the provisional list published by the Government, the appellant was not shown as late latiff. Therefore, the appellant was not made aware of the fact that the appellant was late latiff in the eyes of the Government while clearing the examination of LRQE. Had the Government pointed out the said fact to the appellant at the time of preparation of the provisional seniority list, the appellant would have made appropriate representations to the

Government to point out the correct facts. Since the appellant was shown as regular in LRQE examination, it was not open for the respondent Government to treat the appellant as a late latiff and give the placement in the seniority list accordingly. The said action of the Government was dehorse the provisions of law and grossly violates the basic parameters of principle of natural justice.

8. Mr. Mangukiya has further submitted that the juniors of the appellant have been shown seniors and have been allotted the placement as such while publishing the final seniority list. The person placed at Sr. No. 98 is a junior to the appellant in all respects. The appellant and the person at Sr. No. 98 have remained in the cadre at the same time. The appellant has cleared the examination of LRQE and HRQE in time. Therefore, no question arises to disturb the seniority of the appellant. The appellant cleared the examination of LRQE in four chances. The appellant being the member of the Scheduled Caste community has to clear the examination in

four chances. The appellant got one more chance being candidate of the Schedule Caste. Therefore, the appellant has cleared the examination of LRQE within prescribed time and prescribed chance. Hence, there was no question of placing the appellant at the lower serial number considering the appellant as being late latiff. The person at Sr. No. 98 has also passed examination within time and within prescribed chances. He has, therefore, submitted that the appellant ought to have been required to be considered at par with the person at Sr. No. 98.

9. Mr. Mangukiya has further submitted that the Learned Single Judge has failed to appreciate that the contentions raised by the appellant were entirely different than the contentions raised in the other petitions. The appellant has approached to this Court by filing the petition and by raising specific point, including others that the seniority allotted to the appellant was ex facie arbitrary and ultravires as the State Government has allotted the seniority

higher in serial number to the juniors of the appellant. He has, therefore, submitted that the appeal filed by the appellant against the judgment and order of the Learned Single Judge deserves to be admitted and allowed.

10. Mr. Apurva Dave, learned Assistant Government Pleader appearing for the respondents has submitted that the issue involved in the present appeal is squarely covered by the decision rendered by the Learned Single Judge in Special Civil Application Nos. 7158 & 9333 of 1995 and appeals filed against the said decisions are pending before this Court. He has further submitted that the appellant retired on 31.01.1999 and hence, since the order of reversion was stayed by this Court at the time of issuance of notice and status-quo is maintained till the appellant retired, the challenge to the said order of reversion becomes infructuous.

11. After having heard learned advocates appearing for the respective parties and after having gone through

the impugned order as well as the averments made in the petition and the documents attached therewith, we are of the view that the challenge in the petition was of two fold. The first challenge was in respect of issuance of a writ of mandamus and/or in the nature of mandamus and/or by any other writ, order or direction directing the respondent State Government to place the petitioner at the appropriate place in the seniority list and, more particularly, at the place between serial No. 98 & 99 before Mr. V. S. Shah. The second challenge was against the seniority list dated 09.03.1995 which should be declared as illegal, ultra-vires and bad in law. As far as first challenge is concerned, in view of the retirement of the appellant on 31.01.1999, the same has become infructuous and in view thereof, the second challenge to the seniority list has become merely academic. We are, therefore, of the view that the present appeal is required to be disposed of by holding that the reversion order passed against the appellant was never implemented as it was stayed by this Court and the appellant has retired as

Mamlatdar and hence, there is no question of implementation of the order of reversion. Since the appellant has worked right from the date of his promotion to the Mamlatdar as Mamlatdar, whatever benefits he has derived as Mamlatdar are not required to be recalled and hence, without going into the merits of the matter, we hold that the order of reversion passed by the respondents in the case of appellant has become inoperative since he has already retired on 31.01.1999.

12. With the aforesaid observation and direction, this appeal is accordingly disposed of.

13. Since appeal is disposed of, Civil Application does not survive and it is accordingly disposed of.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya